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Order
Entered: April 9, 2004

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

124513

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

SCHNEIDER NATIONAL CARRIERS, INC., SCHNEIDER TRANSPORT, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER TANK LINES, INC., and SCHNEIDER SPECIALIZED CARRIERS, INC.,
Plaintiffs-Appellees,

v

SC: 124513
COA: 208346
Ct of Claims: 96-016473-CM

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, CONSUMER AND INDUSTRY SERVICES DEPARTMENT and MICHIGAN PUBLIC SERVICE COMMISSION,
Defendants-Appellants.
_____/

On order of the Court, the application for leave to appeal the August 5, 2003 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

Markman, J., dissents and states as follows:

I would grant leave to appeal to consider whether the fees plaintiff sent, and the state received, before November 15, 1991, were "collected or charged as of November 15, 1991."

49 USC 11506(c)(2)(B)(iv)(III) (1994), recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999).

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 9, 2004 /s/

Deputy Clerk

STATE OF MICHIGAN

COURT OF APPEALS

SCHNEIDER NATIONAL CARRIERS, INC., SCHNEIDER TRANSPORT, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER TANK LINES, INC., and SCHNEIDER SPECIALIZED CARRIERS, INC.,	UNPUBLISHED August 5, 2003
Plaintiffs-Appellants,	
v	No. 208346 Court of Claims
STATE OF MICHIGAN DEPARTMENT OF TREASURY, CONSUMER AND INDUSTRY SERVICES DEPARTMENT and MICHIGAN PUBLIC SERVICE COMMISSION,	LC No. 96-016473-CM
Defendants-Appellees.	
	ON SECOND REMAND

Before: Fitzgerald, P.J., and White and Saad, JJ.

PER CURIAM.

This case is now before us for the third time. *Schneider Nat'l Carriers, Inc v Michigan,* Court of Claims No. 96-016473-CM, November 24, 1997 (*Schneider I*), aff'd *Schneider Nat'l Carriers, Inc v Michigan,* unpublished opinion per curiam of the Court of Appeals, issued May 14, 1999 (Docket No. 208346) (*Schneider II*), vacated after abeyance on the basis of *Yellow Freight System, Inc v Michigan,* 464 Mich 21, 33; 627 NW2d 236 (2001), and remanded for reconsideration 464 Mich 866 (2001), on remand *Schneider Nat'l Carriers, Inc v Michigan (On Remand),* 247 Mich App

716; 637 NW2d 838 (2001) (*Schneider III*), vacated and remanded 468 Mich 862; 659 NW2d 228 (2003). On second remand, the Michigan Supreme Court has directed us to reconsider this matter in light of the United States Supreme Court's recent decision in *Yellow Transportation, Inc v Michigan*, 537 US 36; 123 S Ct 371; 154 L Ed 2d 377 (2002),[1] and to reconsider other preserved arguments of the parties not directly addressed by the Michigan Supreme Court or the United States Supreme Court. 468 Mich 862. We are further directed to address the impact, if any, on this matter of certain representations made by the Solicitor General, in the Amicus Curiae Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation, Inc, supra*. 468 Mich at 862-863.

On the same date that the Michigan Supreme Court issued its second remand order in this case, it issued a virtually identical remand order in the affiliated *Yellow Freight* case, directing that panel of this Court to address the same issues on remand. *Yellow Freight System, Inc v Michigan*, 468 Mich 862 (2003). On July 22, 2003, the *Yellow Freight* panel issued its majority and dissenting opinions on remand. *Yellow Transportation, Inc v Michigan*, ___ Mich App ___; ___ NW2d ___ (Docket No. 194703, issued 7/22/03) (*Yellow Transportation V*[2]). After reviewing Justice O'Connor's opinion in *Yellow Transportation IV*, the majority concluded that its initial decision in *Yellow Freight System, Inc v Michigan*, 231 Mich App 194; 585 NW2d 762 (1998) (*Yellow Freight II*), "stands on substantially stronger ground," leading it to reaffirm that portion of the opinion addressing the question whether the registration fees plaintiff paid to the state in advance for the 1992 registration year were "collected or

---

[1] Yellow Freight System, Inc., became Yellow Transportation, Inc., in January 2002.

[2] Adopting the opinion numbering system employed in earlier *Yellow Freight* opinions, the United States Supreme Court's opinion is designated as *Yellow Transportation IV*, and this Court's most recent opinion on remand is designated as *Yellow Transportation V*.

charged as of November 15, 1991," in accordance with 49 USC 11506(c)(2)(B)(iv)(III).[3] *Yellow Transportation V*, slip op at 5-7.

The *Yellow Transportation V* panel also addressed, in Part III of its majority opinion, the impact of representations made by the Solicitor General in the Amicus Curiae Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation IV*, and determined that the representations have no impact on the issue presented. *Yellow Transportation V, supra*, slip op 7-8.

Yellow Transportation V is controlling and resolves the dispositive issues in plaintiffs' favor in the instant case. Any remaining unresolved issues are rendered moot.

The Court of Claims' November 24, 1997, order is reversed to the extent that it granted summary disposition to defendants, and this matter is remanded to the Court of Claims for calculation of the fee refund to which plaintiffs are entitled. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Helene N. White
/s/ Henry William Saad

---

[3] For a comprehensive summary of the factual and procedural background of these cases, the reader is referred to *Yellow Transportation, supra*, 123 S Ct at 374-375.

Order
Entered: March 11, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

120690 & (84)

SCHNEIDER NATIONAL CARRIERS, INC., SCHNEIDER TRANSPORT, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER TANK LINES, INC., and SCHNEIDER SPECIALIZED CARRIERS, INC.,
Plaintiffs-Appellants,

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

v

SC: 120690
COA: 208346
Ct of Claims: 96-016473-CM

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, CONSUMER AND INDUSTRY SERVICES DEPARTMENT and MICHIGAN PUBLIC SERVICE COMMISSION,
Defendants-Appellees.

_____/

By order of June 24, 2002, the application for leave to appeal from the October 19, 2001 decision of the Court of Appeals was held in abeyance pending the decision of the United States Supreme Court in *Yellow Transportation, Inc v Michigan,* (US Docket No. 01-270). On order of the Court, the decision having been issued by the United States Supreme Court on November 5, 2002, 537 US ___; 123 S Ct 371; 154 L Ed 2d 377 (2002), the application is again considered, and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we VACATE the Court of Appeals decision and we REMAND this case to that court for reconsideration in light of

the United States Supreme Court's decision. On remand the Court of Appeals is also DIRECTED to reconsider preserved arguments of the parties not directly addressed by this Court or the United States Supreme Court, including whether § 4005 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), 49 USC 11506(c)(2)(B)(iv)(III) (1994) [recodified at 49 USC 14504(c)(2)(B)(iv)(III) (Supp. V 1999)], allows defendants to set the State's registration fees at the level that it charged under its new reciprocity policy in September 1991, for calendar year 1992. The parties are further DIRECTED to address the impact, if any, on this matter or representations made by the Solicitor General, in the *Amicus Curiae* Brief of the United States submitted to the United States Supreme Court in *Yellow Transportation, Inc, supra,* about proceedings before the United States Federal Highway Administration involving defendants State of Michigan and Michigan Public Service Commission and about the informality of Michigan's reciprocity policies. See 2001 US Briefs (Lexis) 270 at pp. 23-4 (4/5/02 *Amicus Curiae* Brief of the United States).

We do not retain jurisdiction.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 11, 2003 /s/

Deputy Clerk

STATE OF MICHIGAN

COURT OF APPEALS

SCHNEIDER NATIONAL CARRIERS, INC. SCHNEIDER TRANSPORT, INC., SCHNEIDER NATIONAL BULK CARRIERS, INC., SCHNEIDER TANK LINES, INC. and SCHNEIDER SPECIALIZED CARRIERS, INC.,

Plaintiffs-Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TREASURY, CONSUMER AND INDUSTRY SERVICES DEPARTMENT and MICHIGAN PUBLIC SERVICE COMMISSION,

Defendants-Appellees.

UNPUBLISHED
May 14, 1999

No. 208346
Court of Claims
LC No. 96-016473 CM

Before: Fitzgerald, P.J., and Doctoroff, and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the Court of Claims' order granting defendants' motion for summary disposition pursuant to MCR 2.116(C) (7), (8), and (10) and denying plaintiffs' motion for partial summary disposition and alternative motion to refer the issues to the United States Department of Transportation. We reverse.

After the Court of Claims' decision in the instant case, this Court decided *Yellow Freight System, Inc v Michigan*, 231

Mich App 194, 201; 585 NW2d 762 (1998), involving the same issue. The *Yellow Freight* Court concluded

> that the agency's interpretation of the statute was reasonable. [Referring to the ICC's decision in *American Trucking Ass'n Ins -- Petition for Declaratory Order - - Single State Ins Registration,* 9 ICC2d 1184 (1993).] In our opinion, the agency acted reasonably in determining the fees should be fixed at the level in effect for the 1991 registration year, regardless of whether a new basis for determining reciprocity had been announced for 1992 or whether certain carriers had paid fees for 1992 before November 15, 1991. Plaintiff 's voluntary payment of fees not due and owing does not affect our analysis. [*Id.* at 201.]

Like the instant plaintiffs, Yellow Freight had paid more in fees to Michigan in 1992 than in 1991. It had also paid the 1992 fees before November 15, 1991. *Id.* at 198-199. In concluding that the plaintiffs in *Yellow Freight* were entitled to a refund, this Court reasoned that

> deference should be given to the interpretation of a federal statute by the agency administering it and that following an agency's interpretation promotes uniformity in application by the states. *Gibbs v General Motors Corp*, 134 Mich App 429, 432; 351 NW2d 315 (1984). Where a statute is silent or ambiguous regarding congressional intent, a reviewing court "should defer to a federal agency's construction of the statute unless the agency's interpretation is unreasonable." *Walker v Johnson & Johnson Vision Products, Inc,* 217 Mich App 705, 713; 552 NW2d 679 (1996), citing *Chevron USA, Inc v Natural Resources Defense Council, Inc,* 467 US 837, 844; 104 S Ct 2778; 81 L Ed 2d 694 (1984).
>
> Congress' intent concerning the allowable fee levels is not clear with respect to the pertinent period for fixing the fee levels. The phrase "as of November 15,

> 1991" denotes a period of time that ends on the specified date. However, the statute is silent regarding when the period begins. One could argue a state that had charged or collected fees from a carrier in *any* year before 1991 was entitled to continue to collect the fees under the SSRS. On the other hand, one could conclude, as the ICC did, that the relevant period was the registration year that included November 15, 1991. We do not believe Congress "had an intention on the precise question at issue . . . ." *Chevron*, *supra* at 843, n 9. Because the statute does not reveal congressional intent, we should defer to the ICC's interpretation unless it is unreasonable. *Walker, supra.* [*Id.* at 200-201.]

Given the resolution of this issue by *Yellow Freight*, summary disposition in favor of defendant is reversed and the case is remanded for a calculation of the fee refund to which plaintiffs are entitled. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Martin M. Doctoroff
/s/ Helene N. White

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

SCHNEIDER NATIONAL CARRIERS, INC.;
SCHNEIDER TRANSPORT, INC.;
SCHNEIDER NATIONAL BULK CARRIERS, INC.;
SCHNEIDER TANK LINES, INC.;
and
SCHNEIDER SPECIALIZED CARRIERS, INC.,

OPINION AND ORDER

Plaintiffs-Claimants,

Hon. Peter D. Houk

v

File No. 96-16473-CM

STATE OF MICHIGAN,
MICHIGAN DEPARTMENT
OF TREASURY AND ITS STATE
TREASURER; MICHIGAN DEPARTMENT
OF CONSUMER AND INDUSTRY SERVICES
(FORMALLY MICHIGAN DEPARTMENT OF
COMMERCE) AND ITS DIRECTOR;
MICHIGAN PUBLIC SERVICE COMMISSION
AND COMMISSIONERS, JOHN G. STRAND,
JOHN C. SHEA, AND DAVID A. SVANDA;
AND THOMAS LONERGAN,

Defendants-Respondents.

OPINION

This matter is before the Court on Defendants'-Respondents' Motion for Summary Disposition and Plaintiffs'-Claimants' Motion for Partial Summary Disposition and Alternative Motion to Stay Proceedings and Refer Issues to the United States Department of Transportation. Having reviewed

the briefs and heard Oral Argument on June 16, 1997, the Court issues the following Opinion and Order:

Facts

The Plaintiffs-Claimants (Schneider) are international for-hire trucking companies doing business in Michigan. Schneider is requesting a refund of all fees paid under the Motor Vehicle Single State Registration System (SSRS). 49 USC 11506 *et seq,* recodified at 49 USC 14504, effective January 1, 1996. The SSRS is part of the Intermodal Surface Transportation Efficiency Act. 49 USC 101 *et seq.* Under the SSRS, states may assess interstate motor carriers a fee of no more than $10 per vehicle, not to exceed the amount that the state collected or charged as of November 15, 1991. This Opinion will reference 49 USC 11506. The corresponding parts of section 14504 are substantially the same to their counterpart in section 1506. The Court recognizes that Plaintiffs' claim for refund for fees paid in 1996 and after are pursuant to section 11504.

Under rules promulgated by the ICC at 49 CFR 1022, states entered into various reciprocity agreements. For purposes of determining reciprocity, Michigan would determine in which state a vehicle was registered. If that state had a reciprocity agreement with Michigan, the company would be assessed fees accordingly. Michigan and Illinois had such an agreement. Under Michigan's reciprocity agreements, Michigan did not charge fees for vehicles registered or "base plated" in states which did not charge fees for Michigan vehicles in interstate commerce. Under this system, Schneider vehicles were not charged cab stamp fees for vehicles base plated in Illinois, as Illinois did not charge fees for vehicles base plated in Michigan.

The ICC promulgated rules at 49 CFR 1023 whereby each motor carrier would pay all assessed fees through its home state. Each home state was required to collect and remit fees charged by other states on their behalf. The purpose of the act

was for efficiency. In expectation of the enactment of the SSRS, Michigan changed its method of determining reciprocity. The Michigan Public Service Commission decided that reciprocity was to be based on the principle place of business of a carrier rather than the state in which the vehicle was base plated. This change was effected in 1991.

For the registration year 1991, Schneider's vehicles were base plated in Illinois. Accordingly, Michigan did not charge fees to Schneider for the calender year 1991, due to the informal reciprocity agreement it had with Illinois. However, for 1992 and beyond, Michigan did charge the ten dollar ($10) fee to Schneider since Schneider's principle place of business is Wisconsin, a state which never shared reciprocity with Michigan.

Schneider filed a claim for refund for all fees paid for the years 1994-1997. The State denied all claims with the exception of an overpayment made for 1996.

Analysis

TIME BARRED

The first issue is whether Plaintiffs' claims are time barred. MCL 600.6431(1); MSA 27A.6431 requires that a plaintiff file a written notice of intention to file a claim against the state within one year after the claim has accrued. In this case, Plaintiffs' claims may not be dismissed because Defendant produced no evidence attempting to show that it was actually prejudiced. See May v Dept of Natural Resources, 140 Mich App 730; 365 NW2d 192 (1985).

SSRS

The pertinent part of the Federal Statute which governs the Single State Registration System is at 49 USC 11506(c)(2) and reads in part as follows:

(2) Specific requirements.—

(A) Evidence of certificate; proof of insurance; payment of fees.—Under amended standards, implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in capacity as registration State under such single State system may require a motor carrier holding a certificate or permit issued under this subtitle—

(i) to file and maintain evidence of such certificate or permit;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system.-Such amended standards—

* * *

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that . . . (III) will result in a fee for each participating State that is equal to the fee not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

* * *

(C) Prohibited fees. The charging or collection

> of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce. (Emphasis added).

The statute limits the fee charged to the fee that the state charged as of November 1, 1991 with the limitation that the fee may not exceed $10.00.

Plaintiffs rely on Yellow Freight System, Inc v State of Michigan, Court of Claims No. 95-15706 CM, March 13, 1996, for its claim of refund. Yellow Freight was granted summary disposition and a refund of SSRS fees paid for the years 1994-1996. Those fees were paid under SSRS through Yellow's base state of Kansas. The case is now on appeal to the Court of Appeals.

In Yellow Freight, the Court of Claims granted deference to the ICC's decision in American Trucking Ass'ns - Petition for Declaratory Order - Single State Insurance Registration, 9 ICC 2d 1184 (1993). The State of Michigan took the position that although no fee was charged or collected for 1991, there was a fee for 1992 that was charged and collected in 1991 prior to November 15, 1991. The State believed that, therefore, they were permitted to charge the ten dollar ($10) fee in 1994 and beyond. Yellow asserted that since no fee was charged in 1991, the State was precluded from assessing a fee.

The present issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991" relates to fees charged for the 1991 registration year or for the 1992 registration year was raised by Yellow in American Trucking. Id at 47,364. The ICC interpreted the SSRS, stating that "[w]e think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, . ." Id at 47,365. Yellow advanced the interpretation to the Court of Claims, which in turn, deferred to the ICC interpretation. Yellow, supra at 4. The result was a

refund ordered. Id. Schneider adopts this argument claiming that it is in accord with Congressional intent to freeze fees as of November 15, 1991.

The SSRS is a comprehensive regulatory scheme created under federal law. Congress has charged the ICC with its implementation. This court would normally grant deference to the statutory interpretations of the Act by the ICC. However, it is this court's opinion that the Commission erred. The question presented by Yellow to the ICC relates to which year the charged fees apply. The reply by the ICC, however, concerns the year in which the fees are to be 'charged or collected. The reply does not answer the question. The reply cannot refer to 1991 fees, as Plaintiffs interpret. This would lead to absurd results as discussed below. Even assuming that the ICC did properly address the issue presented, the only logical interpretation is that the ICC is referring to 1992 fees that are charged or collected in 1991.

This Court disagrees with the Plaintiffs' argument, that because the statutory language concerns fees charged or collected for the 1991 registration year, and that they did not pay fees in 1991, that they do not have to *ever* pay fees because the statutory language freezes the fees owed to those charged or collected as of November 15, 1991. The State collects application or renewal fees in the fall of the year for the next calender year. Defendants assert that this is done to ensure proper payment and registration for services to be provided for an entire year. The basis for determining the amount to be charged or collected from a carrier is by the location of the company's principle place of business. The fact that an individual carrier was not assessed fees one year and was assessed fees the next year is irrelevant. The determining factor is location and is not focused on the individual carrier's mere existence. This narcissistic argument produces absurd results. It is a basic rule of statutory construction carried over from common law that absurd results should be avoided. Fortunate v Dept of Transp, 449 Mich 911; 538 NW2d 669 (1995). If, for example, a carrier expands operations into the

State of Michigan after November 15, 1991, then the State will be forever precluded from assessing a fee because the State did not previously assess a fee against that carrier's vehicles. Even more absurd is the situation where a carrier was not yet in existence as of November 15, 1991. In that case, all participating states would be precluded from assessing fees against that carrier because it never paid fees to any state prior to November 15, 1991. These possible results are contrary to the legislative intent of creating a fee system for the filing of proof of insurance.

In summary, the interpretation that the effective date of November 15, 1991 pertains to fees collected for the 1991 calendar year is contrary to the plain meaning of the statute. The proper interpretation is that the SSRS applies to fees charged and collected for the 1992 calender year. Therefore, Schneider is responsible for the fees as their principle place of business is Wisconsin, a state without reciprocity with Michigan.

NOTICE

The notice issue is of limited applicability to this case as the court does not defer to the above ICC interpretation. The notice issue is applicable, however, to Defendants' Tenth Amendment argument.

Defendants argue that the ICC declaratory order decision in American Trucking is not binding because the State did not receive adequate notice of the proceedings, the issues did not involve Michigan issues and, since Michigan did not participate, the ICC did not have the benefit of Michigan policy. Plaintiffs argue that an agency need not conduct an individualized hearing and adjudication before issuing a declaratory ruling under 5 USC 554(e).

An "'order' means the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but

including licensing." 5 USC § 551(6). "'Adjudication' means agency process for the formulation of an order." 5 USC § 551(7). Section 554 which applies in all cases of adjudication with six exceptions that are not applicable here, provides that persons entitled to notice of an agency hearing shall be timely informed of the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; and the matters of fact and law asserted. The Interstate Commerce Commission is bound by requirements of reasonable notice proscribed in 5 USC §54. See North Alabama Exp, Inc v US, 585 F2d 783 (CA 5 1978).

In the instant case, the ICC published notice of the declaratory order proceeding in the Federal Register. 58 FR 48673 (1993). The notice stated that:

> The Commission is acting in view of evidence suggesting that States may be in violation of 49 CFR 1023.2(a), 1023.4(c)(4), and 1023.4(g). This action is part of the Commission's continuing effort to clarify its regulations and facilitate smooth operation of the registration system. The Commission is providing interested persons an opportunity to participate in the proceeding and is inviting their comments. This published notice was sufficient to inform the Defendants and all interested parties of the declaratory proceeding and fully complies with 5 USC §554(b), the notice requirement for adjudications.

10TH AMENDMENT

Defendants assert that the ICC finding that "[i]t is inconsistent with the statute for a state to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system", violates the Tenth Amendment of the United States Constitution. American Trucking, Supra at 47,366. Defendants suggest that if the Federal Government

forces the States to enter into, alter or repeal a compact, it is a violation of the 10th Amendment.

The United States Court of Appeals in National Association of Regulatory Utility Commissioners v Interstate Commerce Utility Commission, 41 F3d 721 (DC Cir 1994), opined that it is irrelevant whether the Legislature focused on reciprocity and held that the ICC properly determined in American Trucking that, under the ISTEA amendments, participating states could not collect fees under new systems in excess of those charged and collected under pre-existing reciprocity agreements.

The Michigan system is consistent with National Association. Michigan merely changed its method of determining which carrier's vehicles were to be assessed fees from the base plating method to the principle place of business of the carrier. Michigan has always, and continues to share reciprocity with Illinois. Likewise, Michigan does not, nor has it ever shared reciprocity with Wisconsin. Michigan continues to charge $10 per vehicle under the ISTEA amendments as it did under the former system. Therefore, the $10 fee charged is not in excess of a pre-existing reciprocity agreement. Neither the ICC's statements concerning reciprocity or the SSRS itself run contrary to the 10th Amendment.

COMMERCE CLAUSE VIOLATION

The parties agree that the underlying statutory authority that allows Michigan to collect fees pursuant to the SSRS is MCL 478.7(4); MSA 22.565(l)(4). That section of the statute reads in relevant part that "[t]he annual fee levied-on each interstate or foreign motor vehicle operated in this state and licensed in another state or providence of Canada shall be $10.00. . . Plaintiff argues that this Section is not consistent with the SSRS and therefore violates the Commerce Clause. Specifically, Plaintiff argues that section 7 authorizes collection of fees for registration of vehicles, while the SSRS at 49 USC 11506(2)(A)(ii) only authorizes collection of fees "to file satisfactory proof of required insurance or qualification as

a self-insurer." Plaintiff further claims that this inconsistency is not in accordance with 49 USC 11506(c)(2)(B)(iv) of the SSRS and pursuant to 49 USC 11506(c)(2)(C), creates a burden on interstate commerce.

A thorough reading of MCL 478.7; MSA 22.565(1) suggests that the statute authorizes fees other than for vehicle registration. MCL 478.7(1) does require the carrier to pay the necessary registration fees before operating the vehicle in interstate commerce. However, 1933 PA 254 as amended by 1989 PA 221 grants the Michigan Public Service Commission broad powers in the arena concerning our public highways and its use by interstate motor carriers. The purpose of the act is to:

> [p]romote safety upon and conserve the use of public highways of the state; to provide for the supervision, regulation, and control of the use of such highways by all motor vehicles operated by carriers of property for hire upon or over such highways; . . . to give the [Michigan Public Service] [C]ommission jurisdiction and authority to fix, alter, regulate, and determine rates, fares, charges, classification, and practices of common motor carriers for such purposes; to require filing with the commission of rates, fares, and charges .... Id.

A copy of a Public Service Commission procedures manual instructs the Commission on how to collect fees pursuant to MCL 478.7(4); MSA 478.7(1)(4). The manual states that "[t]hese fees shall be for filing and maintaining proof of insurance. No other fees shall be collected or assessed either directly or indirectly." MICHIGAN PUBLIC SERVICE COMM'N, SINGLE STATE REGISTRATION SYSTEM PROCEDURES MANUAL (Revised July 1, 1994), p 14. Obviously, fees for the purpose of filing and maintaining proof of insurance is consistent with the stated purpose of the act to promote safety of the public highways. In addition, the broad grant of authority allows the commission to charge and collect fees to further the purpose of the act.

In summary, the legislature implicitly granted the commission the authority to charge and collect fees consistent with the SSRS. The procedures manual is direct evidence that the commission properly assumed that responsibility.

42 USC 1983

For the stated reasons, the Plaintiffs have failed to state a violation of a constitutional right or a federal law. Such a violation would allow a 42 USC 1983 claim. However, Plaintiffs have failed to demonstrate a situation were such a claim exists. Therefore, this claim must be dismissed as to all Defendants.

ORDER

THEREFORE, IT IS ORDERED that for the above stated reasons that Defendants'-Respondents' Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that for the above mentioned reasons, Plaintiffs'-Claimants' Motion for Partial Summary Disposition and Alternative Motion to Stay Proceedings and Refer Issues to the United States Department of Transportation are **DENIED.**

Dated: November 24, 1997

/s/
Hon. Peter D. Houk
Court of Claims Judge

PROOF OF SERVICE

I certify that I mailed a true copy of the above **OPINION AND ORDER** upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Mason, Michigan, on November 24, 1997.

/s/
Ann M. Baird
Judicial Assistant

cc: Ronald J. Mastej
Donald L. Keskey
Judith I. Blinn

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

SCHNEIDER NATIONAL CARRIERS, INC.;
SCHNEIDER TRANSPORT, INC.;
SCHNEIDER NATIONAL BULK CARRIERS, INC.;
SCHNEIDER TANK LINES, INC.; AND
SCHNEIDER SPECIALIZED CARRIERS, INC.

Plaintiffs-Claimants, Case No. **96-16473 CM**
HONORABLE PETER D. HOUK

v

STATE OF MICHIGAN; MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER; MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES (FORMERLY MICHIGAN DEPARTMENT OF COMMERCE) AND ITS DIRECTOR; MICHIGAN PUBLIC SERVICE COMMISSION AND COMMISSIONERS, JOHN G. STRAND, JOHN C. SHEA, AND DAVID A. SVANDA; AND THOMAS LONERGAN,

Defendants-Respondents.

_____/

Ronald J. Mastej (P17195)
Attorney for Plaintiffs
1400 Buhl Building
Detroit, Michigan 48226-3602
Telephone: (313) 963-3750

FRANK J. KELLEY
Attorney General
Don L. Keskey (P23003)
Judith I. Blinn (P26678)
Assistant Attorneys General
Attorneys for Defendants

Public Service Division
6545 Mercantile Way, Suite 15
Lansing, Michigan 48911
Telephone: (517) 334-7650
Fax: (517) 334-7655

AMENDED AFFIDAVIT OF THOMAS R. LONERGAN

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

I, Thomas R. Lonergan, having been duly sworn and deposed states as follows:

1. I am presently and was at all times pertinent to the above action since 1985, employed by the Michigan Public Service Commission in the capacity as Director of the Motor Carrier Regulation Division.

2. I have personally reviewed the Plaintiffs' Complaint filed in the above action and am familiar with the contents of same.

3. I have reviewed Plaintiffs' Motion for Summary Disposition, Brief in Support of Same and Response to Defendants' Motion for Summary Disposition and accordingly submit the additional following facts.

4. By the end of the summer of 1991, Michigan had fully implemented a change in reciprocity based upon a carrier's home location, rather than the previous reciprocity basis utilizing the state where each vehicle was base-plated. The change in the basis of establishing reciprocity occurred several months before the dispositive date in the SSRS of November 15, 1991. Michigan collected all fees from Plaintiffs based upon the revised home-state basis of reciprocity during the period September 23, 1991 through October 10, 1991, as part

of the annual renewal process, significantly ahead of the November 15, 1991 cutoff date in the SSRS.

5. If Plaintiffs were to prevail in this case, the effect would be to ignore the SSRS requirement that fees collected be no greater than those "charged or collected as of November 15, 1991."

6. If Plaintiffs prevailed, the adverse impact upon Michigan, the industry, other states, and the purposes of the SSRS statute would be substantial. The effect of such a decision would be to require Michigan to discontinue basing reciprocity in accord with the location of the home office of each carrier, and to revert to its former basis of determining reciprocity in accord with the state in which each carrier's vehicle was base plated. This would greatly complicate the administration of the SSRS for all states and motor carriers, because:

a. The states which participate in the SSRS would have to voluntarily agree to operate a dual system of SSRS registration. They would have to notify carriers with vehicles that operate in Michigan to submit documentation regarding the various states in which each of these vehicles were base plated. They would also have to verify which states of vehicle registration have reciprocity with Michigan. It is unlikely that all or many of the states would agree to operate this dual system.

b. For the period 1994-1997, motor carriers would be required to submit registrations or other pertinent documentation to Michigan or the base state verifying vehicle registration for the preceding four years in addition to all registration requirements under the SSRS.

c. In Michigan, there are in excess of 2,700 carriers and 500,000 vehicles registered. Nationally, there would be tens of thousands of carriers and millions of vehicles.

Accordingly, the notification procedure would be burdensome and expensive.

d. In Michigan, or the other base states, it would be necessary to review each state's monthly records to determine the names of carriers to be contacted.

e. Upon receipt of the data involving states in which carriers had vehicles registered, all base states would have to review the records and documentation provided and then refund or bill in accord with the change in the law pertinent only to Michigan.

f. A change in the basis of establishing reciprocity in Michigan would result in a system which was incongruent with the systems in all other participating states.

g. For all future years, states would have to maintain dual procedures: (1) for all states that afford reciprocity on the basis of location of carriers; and (2) for vehicles that travel in Michigan (as the Court would be requiring a different reciprocity basis, according to where each vehicle was base-plated).

h. Each participating state would have to separately determine the fees for those vehicles in accord with the location in which the vehicles are base plated with respect to their Michigan authority. Such computations may have to be performed manually.

i. If the states did not agree, Michigan would be the only state among the original participating states in SSRS that would not receive payments from the $10.00 fee. Accordingly, the services the state provides for the fee might have to be eliminated.

7. A change in the basis of establishing reciprocity in accord with the American Trucking decision would negate the concept of uniformity contrary to the purposes of the SSRS and

the implementing regulations. It would also negate the SSRS purposes to simplify recordkeeping and to preserve state revenues.

8. Fees collected from motor carriers are a valid business expense which are generally factored in as a component in rates charged to customers, and are a business expense subject to tax deductions. In accord with common business practice, Plaintiffs' payment of fees have most likely been included in Plaintiffs' business costs and prices charged customers. If a refund were required, it is unlikely that Plaintiffs would pass refunds through to their customers.

9. Motor carrier SSRS registrations in Michigan of interstate operations must include a copy of their proof of liability insurance. (See example included as Exhibit 1).

10. Attached hereto as Exhibit 2 is my letter of December 12, 1996 verifying the refund of excess fees that Schneider mistakenly paid to Michigan for 1996.

11. It has been Michigan's long standing practice to collect renewal fees in the fall of each year for registration of the upcoming calendar year, as is the practice with most, if not all, other states. In fact, the SSRS requires motor carriers to register in the fall prior to the calendar year. The SSRS procedures manual states that registrants must file an application for registration and pay fees no earlier than August 1 and no later than November 30 of each year for the upcoming calendar year. A copy of the relevant sections of the SSRS manual are attached hereto and identified as Exhibit 3.

Further affiant sayeth not.

/s/

Thomas R. Lonergan, Director
Motor Carrier Regulation Division
Michigan Public Service Commission

Subscribed and sworn to before me this
5th day of May, 1997.

/s/

Pamela A. Cabic, Notary Public
Eaton County, Michigan
My Commission Expires: 2/4/98

EXHIBIT 1

It is estimated that an average of ¼ burden hour per response is required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission and the Office of Information and Regulatory Affairs, Office of Management and Budget.

MOTOR CARRIER AUTOMOBILE BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE

filed (In Triplicate) with:
INTERSTATE COMMERCE COMMISSION
INSURANCE BRANCH
WASHINGTON, D.C. 20423

Received:
Date_____

I.C.C. DOCKET NO.
MC_____
(or FF_____)

Approved by OMB
3120-0081
Through 10-31-95

This is to certify that the OLD REPUBLIC INSURANCE COMPANY (name of company) (hereinafter called Company) of BOX 789, 414 W. PITTSBURGH ST., GREENSBURG PA, USA 15601-0789 (home office address of company) has issued to ELITE MOTOR FREIGHT LTD. (name of motor carrier) of 7151 FIR TREE DRIVE, MISSISSAUGA, ONTARIO L5S 1G5 (address of motor carrier) insurance under terms described on the back of this form to provide coverage for the FULL SECURITY LIMITS required under Section 1043.2(b)(1) or Section 1043.2(b)(2) of Title 49 of the Code of Federal Regulations.

Effective from DEC. 8/1996 (12:01 a.m., standard time at the address of the Insured as stated In said policy or policies) and continuing until cancelled as provided in the rules and regulations under Section 10927 of Title 49 of the United States Code.

Signed at BOX 557, 100 KING STREET WEST, HAMILTON, ONTARIO L8N 3K9. Date DEC. 6, 1996

OLD REPUBLIC INSURANCE COMPANY

Insurance Company Policy No. T20598A

/s/

EXHIBIT 2

John Engler, Governor

6545 Mercantile Way
PO Box 30221
Lansing, MI 48909-7721

Department of Consumer & Industry Services
Kathleen M. Wilbur, Director

517-334-6446

Commissioners

John G. Strand
John C. Shea
David A. Svanda

December 12, 1996

Mr. Ronald J. Mastej
Eames Wilcox
1400 Buhl Building
Detroit, MI 48226-3602

Dear Mr. Mastej:

Re: Schneider National Carriers, Inc., et al

This is to inform you that I have directed my staff to initiate a refund to Schneider of 1996 SSRS fees for vehicles for which MPSC decal fees have also been purchased. It is not within my authority to provide refunds for prior years.

Sincerely,

/s/
Thomas R. Lonergan

cc: Judith Blinn

EXHIBIT 3

G. The registration year will be a calendar year.

H. Fees collected under this system will not be prorated for partial year operations.

I. Any changes to the authority granted by the ICC after the initial registration in the registration state will be filed with the registration state. The registration state may waive the filing of any authority granted by the ICC if that grant of authority certificate or permit is longer than 20 pages in length. When the waiver is granted in writing, the motor carrier shall provide a copy of the portion of the Commission order which shows the service date and order section and shall prepare and file a synopsis of the authority granted within the body of the order.

J. A registrant may request in writing that its registration be cancelled. The registration state will immediately cancel such registration and give written notice of cancellation to the registrant. The notice of cancellation will show the effective date of cancellation and shall be mailed to the registrant requesting such cancellation. Each registration state shall transmit information concerning the motor carrier's full name, business address, MC number and DOT number for each carrier requesting cancellation of registration to all affected jurisdictions participating in the program when the next monthly fee accounting transmittal is required to be submitted to each registration state. No fees shall be refunded.

IV. CHANGE OF REGISTRANT'S PRINCIPAL PLACE OF BUSINESS

A. A motor carrier may not change its registration state unless it changes its principal place of business or its registration state ceases or commences participation in the program.

B. For the purposes of this program, the carrier's principal place of business for registration selection will be the business address the motor carrier indicated on the order issued by the Commission or as otherwise noticed to the Commission pursuant to an address change.

C. When a registrant changes its principal place of business to another state participating in this program before the annual registration period of August 1 to November 30, the registrant may move its registration to the new registration state at the next registration period or retain registration in the current registration state for no more than one additional year.

D. When a registrant changes its principal place of business to another participating state, the registrant shall notify the new registration state and the current registration state within 30 days after it has made its selection.

E. When the registrant changes its principal place of business and selects a new registration state, the motor carrier shall refile in the new registration state the application, a copy of its interstate operating authority and a copy of the designation of agent(s) for service of process. Proof of insurance must be filed in the new registration state showing the change of business address of the registrant.

F. When the registrant changes its principal place of business to a state that it not eligible to participate in this program, the registrant shall retain the current registration state designation for registration purposes and file notice of business address change along with a new insurance filing in its registration state.

G. If a registrant changes its principal place of business <u>during a registration period</u> and that principal place of business change affects its reciprocity status to now afford it reciprocity from payment of fees, the registrant shall not be allowed any credit or refund of prior fees paid for that

registration period. The new principal place of business shall be used by the current registration state for determination of proper payment of future fees or waiving of those fees for any additional states of travel or additional equipment added.

H. The motor carrier must give notice of its change in registration state to its insurer as soon as practicable.

V. REGISTRATION PROCESS – Application Form

A. The applicant shall file annually between the 1st day of August and the 30th day of November of the year preceding the registration year an application for registration of all ICC regulated interstate operations with the registration state only. The required application form to be used is attached hereto.

B. The application form must be completed in its entirety and signed by an authorized member of the company or its agent, otherwise the registration shall be considered incomplete.

C. The application must contain the full name of the motor carrier. This includes all owner name(s) and any d/b/a (doing business as). This name will be verified with the name shown on the ICC certificate or permit submitted with the application. If the name on the application differs from the most recent ICC certificate or permit, the registration will be considered incomplete until the applicant provides a copy of the reentitlement from the ICC showing the change of name or amends the application form by providing written notice to the registration state.

D. The business city and business state address on the application will be verified with the ICC certificate or permit submitted with the

§ 14504. Registration of motor carriers by a State

(a) Definitions. In this section, the terms "standards" and "amendments to standards" mean the specification of forms and procedures required by regulations of the Secretary to prove the lawfulness of transportation by motor carrier referred to in section 13501.

(b) General rule. The requirement of a State that a motor carrier, providing transportation subject to jurisdiction under subchapter I of chapter 135 [49 USCS §§ 13501 et seq.] and providing transportation in that State, must register with the State is not an unreasonable burden on transportation referred to in section 13501 when the State registration is completed under standards of the Secretary under subsection (c). When a State registration requirement imposes obligations in excess of the standards of the Secretary, the part in excess is an unreasonable burden.

(c) Single State registration system.

(1) In general. The Secretary shall maintain standards for implementing a system under which--

(A) a motor carrier is required to register annually with only one State by providing evidence of its Federal registration under chapter 139 [49 USCS §§ 13901 *et seq.*];

(B) the State of registration shall fully comply with standards prescribed under this section; and

(C) such single State registration shall be deemed to satisfy the registration requirements of all other States.

(2) Specific requirements.

(A) Evidence of federal registration; proof of insurance; payment of fees. Under the standards of the Secretary implementing the single State registration system described in paragraph (1) of

this subsection, only a State acting in its capacity as registration State under such single State system may require a motor carrier registered by the Secretary under this part [49 USCS §§ 13101 *et seq.*]--

(i) to file and maintain evidence of such Federal registration;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system. The standards of the Secretary--

(i) shall require that the registration State issue a receipt, in a form prescribed under the standards, reflecting that the carrier has filed proof of insurance as provided under subparagraph (A)(ii) of this paragraph and has paid fee amounts in accordance with the fee system established under clause (iv) of this subparagraph;

(ii) shall require that copies of the receipt issued under clause (i) of this subparagraph be kept in each of the carrier's commercial motor vehicles;

(iii) shall not require decals, stamps, cab cards, or any other means of registering or

identifying specific vehicles operated by the carrier;

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that--

(I) is based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates;

(II) minimizes the costs of complying with the registration system; and

(III) results in a fee for each participating State that is equal to the fee, not to exceed $ 10 per vehicle, that such State collected or charged as of November 15, 1991; and

(v) shall not authorize the charging or collection of any fee for filing and maintaining evidence of Federal registration under subparagraph (A)(i) of this paragraph.

(C) Prohibited fees. The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce.

(D) Limitation on participation by States. Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

478.7 Motor carrier engaged in interstate or foreign transportation of property for compensation; registration and vehicle fees; filing record of authority; approval of application for registration of exempt operations; annual fee; reciprocal agreement; disposition of fees.

Sec. 7.

(4) The annual fee levied on each interstate or foreign motor carrier vehicle operated in this state and licensed in another state or province of Canada shall be $10.00. The commission may enter into a reciprocal agreement with a state or province of Canada that does not charge vehicles licensed in this state economic regulatory fees or taxes and may waive the fee required under this subsection.